Filed 6/4/19 In re K.V. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re K.V., a Person Coming Under the Juvenile Court Law.	
Y.C., Petitioner and Respondent, v. R.V., Objector and Appellant.	F078050 (Super. Ct. No. BAT18003005) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Kern County. Susan M. Gill, Judge.

David M. Thompson, under appointment by the Court of Appeal, for Objector and Appellant.

No appearance for Petitioner and Respondent.

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[*] Before Poochigian, Acting P.J., Snauffer, J. and DeSantos, J.

INTRODUCTION

Appellant R.V. appeals an order declaring his now 11-year-old minor daughter, K.V., free from his custody and control under Family Code section 7822.[1] Section 7822 provides that a petition to free a child from a parent's custody and control may be granted where "one parent has left the child in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent, with the intent on the part of the parent to abandon the child." (§ 7822, subd. (a)(3).) Appellant contends the evidence does not support the trial court's finding that he intended to abandon K.V. within the meaning of section 7822. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 17, 2018, respondent mother, Y.C., filed a petition for an order declaring K.V. free from appellant's parental custody and control and terminating appellant's parental rights and responsibilities with regard to K.V., alleging appellant had left K.V. in the custody of respondent without provision for support or communication from him since 2010.

Contested hearings were held on August 17 and 29, 2018, and revealed the following facts. After K.V. was born in 2008, she, appellant, and respondent lived together. In 2009, appellant was deported to Tijuana. Respondent visited appellant in Tijuana once with K.V., but according to respondent, appellant was not interested in spending time with K.V. Instead, he wanted to go out, and he and respondent left K.V. with appellant's relative.

Appellant returned to the United States for K.V.'s baptism in 2012. Approximately two months after K.V.'s baptism, appellant was deported a second time.

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[1] All further statutory references are to the Family Code.

Appellant returned to the United States in 2014 and made one phone call to respondent and told her he had money and clothes for K.V. Appellant said that during that phone call, respondent told him she did not need anything from him. Appellant testified he went to respondent's home with his sister in 2014. Appellant said respondent's boyfriend, F.V., tried to "beat [appellant] up." Appellant did not take any threat F.V. made on that occasion seriously. F.V. testified he remembered that occasion taking place in 2010 or 2011, and on that occasion, he felt appellant was threatening respondent. F.V. told appellant he could come visit or pick up K.V. to take her out but not if he was going to come unannounced and argue with respondent Appellant said that he did not call respondent once in 2015 because respondent said she did not need anything from him.

Respondent testified that when she and appellant first separated, she asked for support, and he helped two to three times by giving her $100 for health insurance. She said it became very difficult to get him to help her because he would ask for receipts and wanted to make sure she was not spending the money on her boyfriend. Respondent testified it had been many years since she asked appellant for any help. She did not recall appellant trying to give her anything for K.V. after he gave the money for health insurance. Respondent testified that the last gift appellant gave K.V. was a Kindle Fire when she was two or three years old. From the period between the summer of 2016 and January 2018, respondent did not receive any clothes, school supplies, or any type of support from appellant for K.V. During that same period, appellant had not had any father-daughter interaction with K.V., and respondent was not aware of appellant attending any of K.V.'s school functions.

Appellant confirmed he never paid child support and said it was because respondent did not want it. He remembered giving respondent $200 or $100 at some point. He stated he never sent birthday or Christmas presents because respondent did not

want anything. On cross-examination, appellant was unable to recall specific instances where he offered money or clothes besides the 2014 phone call.

In August 2017, respondent initiated a parentage action and filed a request for sole custody. Appellant said F.V. served him with a summons and petition in the parentage action and that F.V. told appellant "to not go near the girl and to pay attention to the paperwork that I sent." Appellant remembered that after he received the documents, he called respondent regarding visitation. Respondent stated she was the one who called appellant in 2017 to try to come to an agreement. She said during this call appellant just said, "Why are you trying to take my daughter away? I never abandoned you." Respondent said appellant's focus was on her (respondent) not K.V.

In September 2017, appellant filed a response in the parentage action requesting visitation. Appellant said the reason he filed the request for a visitation order was "because [he] found out [respondent] was trying to take [his] rights away." Referring to the parentage action, respondent learned she filed the "wrong paperwork," and subsequently filed the petition to free K.V. from the custody and control of appellant. The parentage action was stayed pending the results of the abandonment petition.

Appellant said in late 2017, he went to respondent's house, and F.V. came out to the car and indicated he had a gun. Appellant said he did not report the incident to the police because "the problem was not between him and I. The problem was between [respondent] and I."

Appellant's sister, A.C., testified the last time she visited with K.V. was in 2015. Appellant was not with her on that occasion. A.C. remembered visiting K.V. with appellant but could not remember the year. A.C. brought some food like chicken nuggets and fruit to K.V. A.C. said she attempted to bring clothes to K.V., but respondent did not take them because she did not need them. Respondent testified she never denied A.C. contact with K.V.

Upon hearing argument from the parties, the trial court granted respondent's petition, and appellant filed a timely notice of appeal.

DISCUSSION

Appellant's sole issue on appeal is that the evidence was insufficient to support the trial court's finding that he abandoned K.V. within the meaning of section 7822. Section 7800 et seq. governs proceedings to have a minor child declared free from a parent's custody and control. (§ 7802; *Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1009 (*Allison C.*).) "A declaration of freedom from parental custody and control … terminates all parental rights and responsibilities with regard to the child." (§ 7803.)

A court may declare a child free from parental custody and control if the parent has abandoned the child. (§ 7822; *Allison C.*, *supra*, 164 Cal.App.4th at p. 1010.) Abandonment may occur when "[o]ne parent has left the child in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent, with the intent on the part of the parent to abandon the child." (§ 7822, subd. (a)(3).) " 'The … failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent … ha[s] made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent….' (§ 7822, subd. (b).)" (*Allison C.*, *supra*, 164 Cal.App.4th at p. 1010.) The parent need not intend to abandon the child permanently; rather, it is sufficient that the parent had the intent to abandon the child for the statutory period. (*In re Daniel M.* (1993) 16 Cal.App.4th 878, 885 [construing the predecessor statute].)

We review the family court's findings under section 7822 for substantial evidence. " ' "An appellate court is not empowered to disturb a decree adjudging that a minor is an abandoned child if the evidence is legally sufficient to support the finding of fact as to the abandonment [citations]." ' [Citation.] 'The appellant has the burden of showing the

finding or order is not supported by substantial evidence.' " (*Allison C.*, *supra*, 164 Cal.App.4th at p. 1011.)

The parties agree that appellant failed to provide support for and/or communicate with K.V. for at least a period of one year. This raises the presumption of intent to abandon. Appellant argues this presumption is rebutted by evidence he was threatened by F.V. at respondent's residence in 2014 and evidence that respondent "insisted" appellant stay away and refused support.

Appellant's claim that he did not provide support for or communicate with K.V. because of the confrontation in 2014 is unconvincing because he told the court he did not take any threats made on that occasion seriously. Appellant wishes for us to disregard his comment to the court by pointing to another part of appellant's testimony where his attorney asked him if he was afraid of F.V., and appellant said, "yes, because he threatened me two times." But on cross-examination immediately after this statement, appellant clarified that the first time he felt threatened was the 2017 incident when F.V. served the parentage action documents on appellant, not the 2014 incident.

Appellant asserts that respondent refused offers of support from him, yet, the only evidence of concrete attempts at contact or support cited by appellant in his testimony were the phone call and the visit to the residence in 2014. Respondent pressed appellant on cross-examination for concrete examples of his attempts at support and communication, and he only referred to 2014. Even if we were to accept appellant's assertion that respondent and/or F.V. were in fact actively refusing appellant's offers of support or were trying to keep him away from K.V., appellant gives no explanation as to why he did not initiate a parentage action to secure visitation rights any sooner than 2017. By his own admission he only did so at that time because respondent was trying to "take [his] rights away"; noticeably, he did *not* say it was because he wanted to communicate with or provide support for his daughter.

Based on the foregoing, we conclude substantial evidence supports the trial court's finding that appellant abandoned K.V.

DISPOSITION

The order is affirmed.